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November 11, 2016

The Honorable Richard J. Sullivan
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: **Bush et al v. Element Financial Corp. et al, No. 1:16-cv-1007-RJS**

Dear Judge Sullivan:

Defendants Element Financial Corp. (“Element”) and Steve Grosso (“Mr. Grosso”) (together, “Defendants”) hereby respond to Plaintiffs’ letter to the Court with respect to discovery dated November 10, 2016.

Defendants acknowledge receiving Plaintiffs’ request to meet and confer pursuant to Rule 37(a)(1). However, the parties have been engaged in active settlement negotiations over the past two weeks, and it was the understanding of counsel for Defendants that placing a discovery motion before the Court would be held off until negotiations either succeeded or proved fruitless.

As the Court is aware, a Mediation took place with respect to this case before Magistrate Judge Barbara Moses on September 27, 2016. Although settlement was not reached at that time, Judge Moses scheduled a follow up conference call as to progress with settlement efforts for October 31, 2016. Defendants advanced a new settlement offer to Plaintiffs on October 28, 2016. This was discussed and encouraged by the Court during the conference call with Judge Moses. Thereafter, Plaintiffs have requested additional information with respect to the settlement offer which has been exchanged via email over the past two weeks. In fact, the last piece of information requested by Plaintiffs was provided by email yesterday, November 10, 2016.

Accordingly, Defendants fail to understand Plaintiffs filing of a Motion with respect to discovery several hours after receiving the final piece of information requested in support of the settlement offer. There is adequate time next week to proceed with asking the Court for

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assistance with respect to discovery, should the settlement efforts prove fruitless. Further, Defendants offer of settlement is premised on limiting trial costs going forward.

Where necessary, Defendants have cooperated with Plaintiffs' with respect to discovery. Both parties have produced voluminous documents in response to Requests for Production of Documents and answered Interrogatories. Defendants have identified Rene Paradis, CFO of Element Financial, as their "expert" with respect to trial. Defendants have even agreed to produce an expert report on behalf of Ms. Paradis, even though her testimony will be factual and she is scheduled for deposition later this month.

Accordingly, Defendants were surprised to receive Plaintiffs' letter to the Court with respect to discovery attached to an email this past evening. Defendants had expected to receive a final response to their offer of settlement before proceeding with the cost of Motions and further discovery. In light of Plaintiffs' letter, Defendants' request the right to confer and provide a joint letter with respect to Plaintiffs' allegations with respect to discovery. Counsel on behalf of Defendants shall make himself available at Plaintiffs' counsel's discretion today or at any time on Monday.

Thank you for your consideration.

Respectfully yours,

/s/Peter J. Deeb

Peter J. Deeb

PJD:coo

cc: Bryce Yoder, Esq. (via email)
Jay S. Hellman, Esq. (via email)